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March 26, 2004

Regulation Comments  
Chief Counsel's Office  
Office of Thrift Supervision  
1700 G Street, NW  
Washington, DC 20552  
Attention: No. 2003-62

Ms. Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, DC 20551  
Attention: Docket No. R-1173

Public Information Room  
Office of the Comptroller of the Currency  
250 E Street, S.W., Mail stop 1-5  
Washington, DC 20219  
Attention: Docket No. 03-27

Robert E. Feldman  
Executive Secretary  
Attention: Comments/Executive Secretary Section  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street, NW  
Washington, DC 20429

Re: Interagency Proposal to Consider Alternative Forms of Privacy Notices Under the  
Gramm-Leach-Bliley Act  
68 FR 75164 (December 30, 2003)

Dear Sir or Madam:

America's Community Bankers ("ACB")<sup>1</sup> is pleased to comment on the Interagency Proposal to Consider Alternative Forms of Privacy Notices Under the Gramm-Leach-Bliley Act.<sup>2</sup> The Agencies<sup>3</sup> request comments on whether they should consider amending the regulations that implement sections 502 and 503 of the Gramm-Leach-Bliley ("GLB") Act<sup>4</sup> to allow or require financial institutions to provide alternative types of privacy notices, such as a short privacy notice, that would be easier for consumers to understand.

<sup>1</sup> America's Community Bankers represents the nation's community banks of all charter types and sizes. ACB members pursue progressive, entrepreneurial and service-oriented strategies in providing financial services to benefit their customers and communities.

<sup>2</sup> 68 Fed. Reg. 75164 (Dec. 30, 2003)

<sup>3</sup> Office of Thrift Supervision, Treasury; Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; National Credit Union Administration; Federal Trade Commission; Commodity Futures Trading Commission; and Securities and Exchange Commission.

<sup>4</sup> 15 USC 6802-6803.

### **ACB Position**

ACB appreciates the stated intention of the Agencies to develop a model privacy notice that would be short and simple. ACB shares the goal of making privacy notices less complicated, more readable, and easier for consumers to understand. Community banks are wholly dependent on the trust of their customers, and this trust represents their most valuable asset. As such, our members take extraordinary care to ensure that customer information is safeguarded and go to great measures to communicate that fact through privacy notices.

While we appreciate the efforts being made by the Agencies with respect to a short form privacy notice, ACB strongly believes that financial institutions should be allowed, not required, to use a short form privacy notice. We encourage the Agencies to provide model notices and sample clauses, accompanied by safe harbor protections, for institutions to use.

### **Goals of a Privacy Notice**

The goals of an institution's privacy notice should be to: (1) inform customers of the institution's commitment to protecting the confidentiality of customer information; (2) succinctly highlight the safeguards an institution has in place to protect the confidentiality of customer information; (3) provide this information in plain English; and (4) avoid any unintended consequences, such as confusing customers.

ACB believes that the Agencies should pursue the development of a model privacy notice that is easier to read and more concise than the sample clauses provided in the GLB Act. At the same time, the Agencies should remain cognizant that any changes to the GLB Act privacy notices should simplify, not further complicate, the process for customers and the institutions that serve them.

In developing a short privacy notice, the Agencies should pay special attention to ensure that differences between federal and state laws do not add additional burdens on institutions based on geography. For example, because the GLB Act requirements do not preempt state laws, several states impose stricter requirements on information sharing practices and policies (such as so-called "opt-in" requirements) than does the federal law. Compliance with these state law requirements is mandatory for institutions in those states. In such situations, institutions should not be required to develop and provide more than one privacy notice for customers, nor should the new short notice requirements be different for institutions in one state than for those in another.

To help protect institutions from being discriminated against based on geography, we urge the Agencies to consider providing "safe harbor" provisions, such as explicit sample clauses, that are broad enough to encompass any differences that arise between federal and state law requirements.

### **Elements of a Privacy Notice**

The key elements of GLB Act privacy notices are: (1) the categories of customer information that an institution collects; (2) the categories of third parties to whom an institution discloses customer information; (3) the types of information sharing practices with third parties that trigger the opt-out requirement under the GLB Act; and (4) the types of information sharing practices with third parties that do not trigger the opt-out requirement, such as joint marketing activities and disclosures of information to service providers.

Any new short privacy notice developed by the Agencies should not require any elements beyond those found in the fundamental framework established by the GLB Act. ACB also believes that a short privacy notice should not include a statement advising consumers and customers that an institution's complete privacy policy will be provided upon request. This requirement would impose a significant burden on community banks, while providing little corresponding benefit to consumers and customers. Many privacy notices already include contact numbers and e-mail addresses that consumers and customer can use if they have additional questions about an institution's privacy policies.

### **Language of a Privacy Notice**

ACB believes that customers have difficulties understanding existing GLB Act privacy notices because of the complicated, legalistic language that is used in many of the current notices. For example, many institutions currently use terms, such as "nonpublic personal information" and "nonaffiliated third parties," because there is no explicit flexibility in the current regulations as to language. To encourage the use of more plain English in privacy notices, we urge the Agencies to consider providing institutions with a glossary of more colloquial terms, accompanied by safe harbor protections.

In addition, we recommend that the Agencies consider including sample clauses that institutions may choose to use in their notices. To ensure maximum flexibility, it is critical that institutions not be required to use these sample terms, but permitted to do so. Otherwise, the short privacy notices will be in danger of sounding just as rigid and legalistic as some of the current privacy notices.

### **Mandatory or Permissible Aspects of a Privacy Notice**

ACB believes that use of a short notice should not be made mandatory for all institutions. Community banks implement many different policies and procedures to safeguard customer information. Information sharing practices vary widely from institution to institution. ACB believes that many institutions—including community banks—would be interested in using a short form privacy notice, but trying to impose a "one size fits all" notice requirement would be counterproductive.

ACB strongly encourages the Agencies to create a safe harbor from administrative enforcement for financial institutions that use standardized clauses in their notices or an entire standardized notice.

ACB does not believe that an institution should be required to deliver both a short privacy notice and a more comprehensive disclosure form. This would impose a tremendous burden on community banks and confuse customers/consumers as to the institution's privacy policy.

Under the GLB Act, financial institutions that do not have affiliates, do not engage in information sharing practices that trigger the opt-out requirement, and do not engage in joint marketing activities are already permitted by law to use simplified privacy notices. We urge the Agencies to allow for an explicit exemption allowing these institutions to continue using their original simplified notices, if they so choose. An exemption would be preferable and more cost-effective than issuing a special short notice for these institutions to use.

### **Limit Annual Notice Requirements**

ACB believes that annual privacy notices for savings associations that do not share information with nonaffiliated third parties outside the limited exceptions found in the GLBA are an unnecessary and redundant burden to both banks and consumers. Such privacy notices do not contain any opt-out election for a customer to make and will most often be duplicative of previous notices. ACB believes that the public interest would have been better served had Congress more closely followed the disclosure principles found in the Truth in Lending Act<sup>5</sup> and its implementing regulation, Regulation Z, and other banking laws/regulations that allow for an initial notice with subsequent notices required when terms are modified.

For institutions with more complex information sharing practices that are required to provide customers with the ability to opt-out of information sharing with third parties, an annual notice requirement may be appropriate as it gives customers an opportunity to control how their information is used.

In responding to comments on the proposed GLBA privacy regulations<sup>6</sup>, the banking agencies noted in the preamble to the final regulations that the need to provide annual privacy notices was a statutory mandate with which the agencies had no discretion to address. ACB suggests that the Agencies consider whether the authority to grant exceptions provided to the regulators in Section 504(b) of GLBA may allow the Agencies some discretion to establish more flexible disclosure requirements. Section 502(a) of GLBA defines the conditions for which privacy disclosures must be provided and states that such notices must comply with section 503, which requires banks provide privacy notices to their customers "not less than annually." Because the agencies are allowed to grant exceptions to Section 502(a), there may be a basis for the establishment of more flexible disclosure requirements without usurping Congressional intent.

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<sup>5</sup> 15 U.S.C. 1601 et seq.

<sup>6</sup> 65 Fed. Reg. 8770 (Feb. 22, 2000)

### **Costs and Benefits of a Short Notice**

Any changes to the existing notice requirement under the GLB Act privacy rule will result in additional costs to community banks, including but not limited to the costs of developing, designing, and producing new notices and training staff. In developing a proposal we request that the Agencies be cognizant that additional requirements translate into additional costs and burdens on community banks. Moreover, costs will also increase if the use of a short notice requires financial institutions to make supplemental privacy information available upon request.

ACB appreciates the opportunity to comment on this important matter. If you have any questions, please contact myself at (202) 857-3121 or [cbahin@acbankers.org](mailto:cbahin@acbankers.org), or Rob Drozdowski at 202-857-3148 or [rdrozdowski@acbankers.org](mailto:rdrozdowski@acbankers.org).

Sincerely,



Charlotte M. Bahin  
Senior Vice President, Regulatory Affairs